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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8665 of 2007

Shri Ratansha Jivraj Patel ...Petitioner
v/s.
Smt. Mayadevi Ramnakshtra Rajbar & ors. ...Respondents

Mr.S.R.Nargolkar, Advocate for the Petitioner

CORAM : B.H.MARLAPALLE,J.
DATED : 29th November, 2007

P.C.

Heard Mr.Nargolkar, the Learned Counsel for the Petitioner who is pressing the compensation claimed in App(WC) No.34/2001 at the instance of Legal heirs of the deceased Ramnakshtra Rajbar.

2. In the said pending application the Petitioner had filed an application to frame an additional preliminary issue as under:-

> Whether the applicants prove that deceased Shri Ramnakshtra Rajbar was in the employment of the opponent?

As noted above, the present Petitioner is the opponent in Application(WC) No. 34/2001 and the application

filed by the Petitioner came to be rejected by the Learned Presiding Officer of the Workman's Claim Tribunal (Labour court at Pune) on 5-4-2007 and hence this Petition under Article 227 of the Constitution.

3. The learned Judge of the Labour Court noted that the following two issues were framed on 4-9-2002 at exh. 14:-

(a) Do the applicants prove that deceased died in the course of and arising out of employment with the opponent parties?

(b) Do the applicants prove that the opponent parties are liable to deposit the compensation amount claimed with penalty and interest?

4. As per the Labour Court, the first issue hereinabove included the preliminary issue as raised by the opponent employer in as much as it was for the applicants to prove the relationship of employer-employee and thus the issue of relationship is covered under issue no.1.

5. The rejection of the application filed by the present petitioner is though justified but a better reasoning lacks in the impugned order. Infact once it

is admitted that the accident had occured in the premises of the opponent, whether the victim was employed by the opponent or by his agent is immaterial and it is the primary liability of the opponent to discharge the burden for payment of compensation amount under the Workmens Compensation Act, 1923. In the instant case the Petitioner in his reply before the Labour Court stated that he had engaged one Shri R. Rajbhar as a contract worker from 31-7-2000 and the contract amount was decided at Rs. 5000/- out of which, an advance of Rs. 2000/- was paid to the Contractor on 25-7-2000. On 31-7-2000 the Contractor came for carrying out the work and the said work was being done by Shri Ramnakshtra Rajbar as the Contractor's worker. At about 3.30 p.m. the deceased was standing very close to the Contractor but while doing the welding work, the Contractor sustained injuries and his worker Ramnakshtra also received severe electric shock. Ramnakshtra was taken to nearest Primary Health Centre and he died in the said dispensary. It is, therefore, the contention of the Petitioner that deceased Ramnakshtra was not his employee and, therefore, he is not liable to pay any compensation under the Workmens Compensation Act, 1923. These contentions are fallacious. Section 3 of the Workmens Compensation Act is regarding the employer's liability for compensation and the term employer has been defined in Section 2(e) and it includes managing

agent of the employer. The term "managing agent" has been defined under Section 2(f) of the Act and clearly includes a contract worker, therefore, even if the deceased was employed through a contractor, the claim for payment of compensation is required to be agitated against the Principal employer or against the employer in whose premises the accident had taken place.

6. Hence, the application filed by the Petitioner was misconceived and it has been rightly rejected. Petition fails at the threshold and the same is hereby rejected summarily.

[B.H.MARLAPALLE,J.]